

NTSB Order No. EA-3994

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of September, 1993

Respondent .

Docket SE-13228

The Administrator has appealed from the oral initial decision Administrative Law Judge Jerrell R. Davis rendered in this proceeding on August 30, 1993, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator to the extent it alleged violations by respondent of section 61.59(a)(2) of the Federal

6165

Aviation Regulations ("FAR," 14 CFR Part 61), but modified the sanction from revocation of respondent's Airline Transport Pilot and Flight Instructor certificates to a 90-day suspension of the flight instructor certificate.² On appeal, the Administrator contends that the law judge erred in reducing the sanction for the charge he affirmed and in dismissing an allegation under FAR section 61.151(b).³ We find ourselves in agreement with the first assignment of error and do not reach the second.⁴

The charges in this matter arise out of respondent's service as a designated pilot examiner (DPE) for the Federal Aviation

²FAR section 61.59(a)(2) provides as follows:

§ 61.59 **Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.**

(a) No person may make or cause to be made--

* * * * *

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance, or exercise of the privileges, or [sic] any certificate or rating under this part....

³The law judge found that there was an insufficient evidentiary basis in the record to support the allegations of violations of FAR sections 61.59(a)(1) and 61.151(b). The latter section provides as follows:

§ 61.151 **Eligibility requirements: General.**

To be eligible for an airline transport pilot certificate, a person must--

* * * * *

(b) Be of good moral character.

⁴The respondent has filed a reply brief opposing the Administrator's appeal and, essentially, urging the affirmation of the initial decision.

Administration (FAA), a position which authorized him, among other things, to conduct various flight tests and checks, and issue temporary certificates, much like some FAA inspectors are empowered to do.⁵ The evidence in this case established, without contradiction, that respondent submitted reports to the FAA (namely, FAA Form 8710-1, "Airman Certificate and/or Rating Application," and FAA Form 8060-5, "Notice of Disapproval of Application") that indicated that three airmen had failed certain flight tests when, in truth, they had not even been examined.⁶ Although finding that the respondent had made intentionally false statements in connection with the documentation for each of the airmen, the law judge concluded that revocation was not warranted. That conclusion appears to be based on his view that because the respondent's falsifications did not result in the certification of anyone who was not qualified, they did not have an adverse impact on air safety. We cannot endorse the law

⁵Following receipt of the pertinent paperwork, permanent certificates are subsequently issued by the Airmen Certification Branch of the FAA's Office of Aviation System Standards.

⁶None of the three airmen was aware of the false reports, and all of them passed the exams when the respondent in fact administered them. Respondent accomplished this by having applicants give him two signed copies of Form 8710-1 (both signed by the applicant and the instructor endorsing the applicant) when the applicants showed up to take a flight exam. The applicant would fill out one of the forms, as appropriate, and tender it and a signed but otherwise blank copy to the respondent. After the exam, the respondent would allow the applicant to believe that he had passed, but the forms the respondent submitted to the FAA (namely, the copy of Form 8710-1 he had received in blank and a copy of Form 8060-5) would indicate a failure. Respondent would subsequently submit the other copy of the Form 8710-1 indicating that the applicant had passed the check ride on a re-examination, when, in fact, no further testing had been done.

judge's determinations that respondent's conduct neither demonstrated that he lacks qualification to hold any certificate nor undermined aviation safety.

The negative impact on air safety of respondent's falsifications is real and direct. The FAA must ensure that those entrusted with the task of certificating airmen perform that function properly and to the highest standards. Consistent with that necessary and ongoing responsibility, and in recognition of the possibility that the quality of testing may suffer where, among other things, too many tests are being given in too short a period of time, the Administrator, in addition to periodic surveillance and annual renewal of all examiners, maintains records relating to the total number of tests individual DPEs administer during a year and to their pass/fail rates. Inaccuracies in these records impair the effective monitoring of the DPE program⁷ and, as a result, raise significant concerns over the competency of both the DPEs and the individuals they certificate.⁸ In light of these factors, we have no hesitancy in concluding that the submission of reports of so-called "false failures," as respondent was shown to have done

⁷In addition, of course, erroneous records pertaining to specific DPEs may serve to shield them from timely discovery of, or accountability for, inadequate or inappropriate testing practices.

⁸In this regard, we note that respondent performed some 587 check rides or exams in 1992. The record suggests that the fee for such tests could be as high as \$250 each. Given the potential for substantial remuneration, unscrupulous examiners, even though well qualified from a technical standpoint, obviously have an economic incentive for avoiding heightened FAA scrutiny.

on at least three occasions, is detrimental to the Administrator's efforts to safeguard the pilot certification process by utilizing statistical criteria to evaluate and supervise the practices and performance of his DPEs.

We also have no difficulty concluding that respondent's violations demonstrate that he lacks the qualification necessary to hold either an ATP or a flight instructor certificate. Since the respondent did not testify in his own defense, we have no direct evidence as to his actual motivation for falsifying the airman records.⁹ Nevertheless, while we think it reasonable to assume that the respondent, for reasons he has chosen not to disclose, believed that the false reports would somehow benefit him, even if he did not so believe, his falsifications reveal, at the very least, either a contempt for the integrity of the certification process he was entrusted to serve and promote, and from which he was profiting economically, or a cynical indifference to his own obligation to facilitate, through truthful participation, the Administrator's acquisition of information vital to informed decisionmaking about the DPE program and its members. In any event, we agree with the

⁹One of his witnesses testified, nevertheless, that respondent believed that he would not be able to retain the FAA designation he held unless he was failing at least ten percent of those he tested. On the record before us, it appears that the only consequence of a lower failure rate would be stepped up monitoring of his performance as a DPE. While we can only speculate that respondent may have wished to develop a reputation for certifying all airmen whom he tested, it is clear that he devised a scheme of fraudulently reporting some failures in an effort to deceive the FAA.

Administrator that an airman who falsely certifies the accomplishment of tests he has not performed does not possess the care, judgment, and responsibility required of the holder of any certificate.¹⁰ Revocation of respondent's ATP and flight instructor certificates is therefore warranted.

Inasmuch as the intentional falsifications proved under section 61.59 independently support the revocation ordered by the Administrator, we decline to decide whether respondent lacks the "good moral character" an individual must have to be eligible for an ATP certificate under section 61.151(b). We therefore will dismiss the Administrator's allegations under that section. However, in the event the respondent reapplies for an ATP and is denied certification on the ground of those allegations, an appeal to the Board would be available.

¹⁰We have previously recognized that an airman's trustworthiness is as much a component of air safety as is his technical competence. See Administrator v. McCarthney, NTSB Order EA-3245 at 6 (1990).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted in part;
2. The initial decision of the law judge is reversed to the extent it modified the sanction in the Administrator's order;
3. The allegations under section 61.151(b) are dismissed;
and
4. The revocation of respondent's ATP and flight instructor certificates is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.